

Utility Trailer and its workers' compensation insurance carrier, Liberty Mutual Insurance Co. (referred to jointly as "Utility" hereafter), ask the Utah Labor Commission to review Administrative Law Judge Marlowe's award of temporary total disability benefits to J.R.D. under the Utah Workers' Compensation Act ("the Act"; Title 34A, Chapter 2, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Ann. §63-46b-12 and Utah Code Ann. §34A-2-801(3).

### **BACKGROUND AND ISSUE PRESENTED**

On April 8, 2003, Mr. D. injured his back working for Utility Trailer. It is undisputed that Mr. D.'s injury is generally compensable under the Workers' Compensation Act. However, with respect to Mr. D.'s claim for temporary total disability compensation, Utility contends it offered medically appropriate light-duty work to Mr. D., but that Mr. D. failed to report for work, thereby abandoning his employment. On that basis, Utility argues Mr. D.'s claim for temporary total disability compensation should be denied.

In a decision issued March 3, 2005, Judge Marlowe found that Mr. D. was never adequately informed of the terms and conditions of his light-duty release and that he was justified in not reporting for work. Judge Marlowe therefore awarded temporary total disability compensation to Mr. D. for the period in dispute.

In its motion for review of Judge Marlowe's decision, Utility reiterates its argument that Mr. D. is not eligible for temporary total disability compensation because he unreasonably rejected Utility offer of medically appropriate light-duty work.

### **FINDINGS OF FACT**

The Commission finds the following facts relevant to Mr. D.'s right to receive temporary disability compensation.

After suffering a work-related back injury on April 8, 2003, Mr. D. sought medical attention for the injury on April 17, 2003. On that date, Dr. Jergens, Mr. D.'s treating physician, placed Mr. D. on light-duty restrictions, prescribed medication, and allowed Mr. D. to return to work. Mr. D. returned to modified work duties at Utility.

On May 8, 2003, Mr. D. again saw Dr. Jergens. Mr. D. reported that his work at Utility prevented him from taking his pain medication and that the work required heavy lifting. Based on Mr. D.'s statements, Dr. Jergens issued a full release from work for one week.

When Mr. D. presented his full work release to Utility, Mr. Wilson, one of Utility's managers, called Dr. Jergens. Mr. Wilson explained to Dr. Jergens that Utility would accommodate any limitations placed on Mr. D.'s work activities. On that basis, Dr. Jergens told Mr. Wilson that

he would issue a new light-duty release which would allow Mr. D. to continued working under certain conditions. Dr. Jergens agreed to fax this new work release to Mr. Wilson that same afternoon. In fact, the work release was received at Utility that same afternoon.

After concluding his conversation with Dr. Jergens, Mr. Wilson returned to his meeting with Mr. D.. Mr. Wilson told Mr. D. that Dr. Jergens had authorized light-duty work and would be faxing the new light-duty release to Utility later that afternoon. Mr. D. told Mr. Wilson that he would return to Utility the following day.

After leaving Utility's premises, Mr. D. called Dr. Jergens' office and asked to speak to Dr. Jergens. He was told that Dr. Jergens was unavailable. Mr. D. did not inquire whether Dr. Jergens had issued a new light-duty release. Instead, Mr. D. asked that Dr. Jergens call him. Dr. Jergens did not return the call.

Thereafter, Mr. D. did not return to Utility, either to return to light-duty work or to determine whether Dr. Jergens had faxed a light-duty release. Consequently, Utility terminated Mr. D.'s employment. On May 8, 2003, Mr. D. stopped by Utility, but only to pick up his final paycheck.

In light of the foregoing, the Commission finds Mr. D. was released by his treating physician to light-duty work and that Mr. D. was aware of that release. The Commission also finds that Utility had medically appropriate light-duty work available for Mr. D., but that Mr. D. refused to report for such work, thereby abandoning his employment with Utility.

### **DISCUSSION AND CONCLUSION OF LAW**

An injured worker is generally entitled to temporary total disability compensation from the date of accident until the healing period has ended. However, if an injured worker is released to light-duty work during the healing period, the employer may choose to provide such work. In that case, the injured worker's right to temporary disability compensation will be reduced to reflect his or her earnings from the light-duty work. See §34A-2-410 of the Act.

The Labor Commission has consistently held that an injured worker's unjustified refusal of an offer of medically appropriate light-duty work terminates the injured worker's right to continuing temporary disability compensation. In this case, Mr. D. contends he was justified in not reporting for light duty work at Utility because he had not received a hard copy of his light-duty release. However, Mr. D. knew from Mr. Wilson that Dr. Jergens had approved light-duty work and that a written copy of the release would be forthcoming later that afternoon. Under these circumstances, if Mr. D. had any legitimate questions about the release, he could have resolved those questions by either asking Dr. Jergens' office staff about the release, or returning to Utility the next morning and asking to see the release. Mr. D. did neither of these things, nor did Mr. D. engage in any subsequent dialogue with Utility Trailer or Dr. Jergens to resolve these matters.

Under these circumstances, the Commission concludes that Mr. D. unreasonably failed to report for medically appropriate light-duty work on May 5, 2003, and is therefore ineligible for temporary total disability compensation after that date.

**ORDER**

The Commission hereby grants Utility's motion for review and sets aside Judge Marlowe's award of temporary total disability compensation to Mr. D.. It is so ordered.

Dated this 30<sup>th</sup> day of September, 2005.

R. Lee Ellertson, Commissioner